



**State of New Hampshire  
Department of Health and Human Services**

**REQUEST FOR APPLICATION  
RFA-2021-DBH-06-MENTA**

**FOR**

**Mental Health Administrative Hearings Legal Representative**

**January 28, 2021**



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## REQUEST FOR APPLICATIONS

### 1. Request for Services

#### 1.1. Purpose and Overview

##### 1.1.1. Purpose

This Request for Applications (RFA) is published to solicit applications for the provision of legal representation of individuals in the following administrative hearings (hereinafter referred to as “Mental Health Administrative Hearings”):

- Hearings appealing the revocation of conditional discharges, in accordance with New Hampshire (NH) Revised Statutes Annotated (RSA) 135-C: 52, Appeal. and NH Administrative Rule He-M 609, Conditional Discharge;
- Hearings to obtain an emergency forty-five (45) day order to administer medications involuntarily in accordance with NH RSA 135-C:57, Treatment Rights; Rules and NH Administrative Rule He-M 306, Medical and Psychiatric Emergencies; and
- Hearings for emergency transfer to the Secure Psychiatric in accordance with NH RSA 622:45, Commitment and NH Administrative Rule He-M 611, Secure Psychiatric Unit Transfers.

The Department of Health and Human Services (Department) anticipates awarding more than one (1) contract for the services in this RFA.

##### 1.1.2. Overview

Individuals who are subject to Mental Health Administrative Hearings have the unconditional constitutional right to legal counsel at administrative hearings, which occur intermittently and without forewarning. Services in this RFA are vital to members of the public who suffer from mental health concerns and who need competent representation. Since the Department is charged with caring for these individuals, it is vital to have contracted attorneys who are independent from the Department.

#### 1.2. Scope of Services

- 1.2.1. The selected Attorney(s) will be assigned by the Department to represent an individual in a specific administrative case and will not receive any fee or expense for representation of that individual in that case except as provided through a contract awarded through this RFA.
- 1.2.2. The selected Attorney(s) will provide attorney services only.
- 1.2.3. The selected Attorney(s) will obtain approval from the Department, if the selected Attorney(s) is a firm, to allow lawyers within the firm to provide representation to individuals, as specified in this RFA.



- 1.2.4. The selected Attorney(s) must make reasonable and diligent efforts to obtain and review relevant court documents, investigative reports, and other discovery materials to determine if any potential conflicts of interest exist in the case.
- 1.2.5. The selected Attorney(s) must maintain record-keeping systems that facilitate the early and efficient identification of conflicts of interest.
- 1.2.6. The selected Attorney(s) will prepare and submit a formal motion for reconsideration when the individual indicates his or her intention to seek reconsideration of a final decision.
- 1.2.7. The selected Attorney(s) will make provision for prompt and effective communication with individuals.
- 1.2.8. The selected Attorney(s) will comply with the Rules of Professional Conduct or any similar code of ethics to which attorneys may be subject.
- 1.2.9. Applicants must demonstrate the capacity and performance experience to meet the Scope of Services outlined in this RFA.

### **1.3. Compensation & Contract Value**

- 1.3.1. The Department anticipates using General funds for the resulting contract(s). The Department may choose to modify the source of funding contingent upon the availability of funds at the time of award. Any selected vendor will be subject to the requirements of the selected funding source.
- 1.3.2. Selected attorneys will be compensated at a rate of \$60 per hour at a maximum of \$300 per case.

### **1.4. Contract Period**

- 1.4.1. Contract(s) resulting from this RFA is anticipated to be effective July 1, 2021 or upon Governor and Executive Council approval, whichever is later, through June 30, 2023.
- 1.4.2. The Department may extend contracted services for up to two (2) additional years, contingent upon satisfactory Contractor performance, continued funding, and Governor and Executive Council approval.

### **1.5. Mandatory Responses to RFA Questions**

- 1.5.1. **Scoring Applicant Capability** – Applicant capability will be allocated a maximum score of 40 points. Applicants must demonstrate the capability to perform all services requested in this RFA.

***Question 1 of 4 – Describe in narrative form, your skills and/or background in mental health law.***



**Question 2 of 4** – Describe, in narrative form, your capability to perform the entire scope of work outlined in this RFA, including any specialized trainings and/or seminars relative to the behavioral health population.

- 1.5.2. **Scoring Applicant Experience** – Applicant experience will be allocated a maximum score of 60 points. Applicants must demonstrate the experience to perform all services requested in this RFA.

**Question 3 of 4** – Describe, in narrative form, your experience in representing individuals with mental illness in administrative hearings as described in this RFA, or other legal proceedings.

**Question 4 of 4** – Describe, in narrative form, your experience interacting with and communicating with individuals with serious mental illness.

## 1.6. Application Evaluation

- 1.6.1. **Capability Q1 – 20 Points**
- 1.6.2. **Capability Q2 – 20 Points**
- 1.6.3. **Experience Q3 – 40 Points**
- 1.6.4. **Experience Q4 – 20 Points**

**Total Possible Points – 100 Points**

## 2. Notices

### 2.1. Exceptions

- 2.1.1. The Department will require the successful Applicant to execute a contract using the Appendix A, New Hampshire Department of Health and Human Services Agreement for Attorney Services State Fiscal Years 2022 and 2023, which are attached as Appendix A. To the extent that an Applicant believes that exceptions to Appendix A will be necessary for the Applicant to enter into an Agreement, the Applicant must note those issues during the RFA Question Period in Section 3. Applicants may not request exceptions to the Scope of Services or any other sections of this RFA.
- 2.1.2. The Department will review requested exceptions and accept, reject or note that it is open to negotiation of the proposed exception at its sole discretion.
- 2.1.3. If the Department accepts an Applicant's exception the Department will, at the conclusion of the RFA Question Period, provide notice to all potential Applicants of the exceptions that have been accepted and indicate that exception is available to all potential Applicants by publication of the Department's responses on or about the date indicated in Section 3.
- 2.1.4. Any exceptions to the standard form contract and exhibits that are not raised by an Applicant during the RFA Question Period will not be considered. In no event is an Applicant to submit its own standard contract terms and



conditions as a replacement for the Department's terms in response to this solicitation.

## 2.2. RFA Amendment

The Department reserves the right to amend this RFA, as it deems appropriate, prior to the Application submission deadline on its own initiative or in response to issues raised through Applicant questions. In the event of an amendment to the RFA, the Department, at its sole discretion, may extend the Application submission deadline. The amended language will be posted on the Department's website.

## 2.3. Application Submission

2.3.1. Applications must be submitted electronically to [contracts@dhhs.nh.gov](mailto:contracts@dhhs.nh.gov) and the Contract Specialist at the email address specified in Subsection 6.1.

2.3.1.1. The subject line must include the following information: **RFA-2021-DBH-06-MENTA** (email xx of xx).

2.3.1.2. The maximum size of file attachments per email is 10 MB. Applications with file attachments exceeding 10 MB must be submitted via multiple emails.

## 2.4. Contract Monitoring Provisions

2.4.1. All Applicants must complete Appendix B, Contract Monitoring Provisions.

2.4.2. The Department will use Applicant responses to conduct a risk assessment to determine if enhanced contract monitoring is necessary if the Applicant is awarded a contract. The risk assessment will not be used to disqualify or score Applications.

## 2.5. Compliance

2.5.1. Applicants must be in compliance with applicable federal and state laws, rules and regulations, and applicable policies and procedures adopted by the Department currently in effect, and as they may be adopted or amended during the contract period.

2.5.2. The selected Contractor must meet all information security and privacy requirements as set by the Department.

### 2.5.3. Audit Requirements

2.5.3.1. The Contractor is required to submit an annual audit to the Department if **any** of the following conditions exist:

2.5.3.1.1. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.



- 2.5.3.1.2. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.
- 2.5.3.1.3. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
- 2.5.3.2. If Condition A exists, the Contractor shall submit an annual **single audit** performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
- 2.5.3.3. If Condition B or Condition C exists, the Contractor shall submit an annual **financial audit** performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
- 2.5.3.4. Any Contractor that receives an amount equal to or greater than \$250,000 from the Department during a single fiscal year, regardless of the funding source, may be required, at a minimum, to submit annual financial audits performed by an independent CPA if the Department's risk assessment determination indicates the Contractor is high-risk.
- 2.5.3.5. In addition to, and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the Contract to which exception has been taken, or which have been disallowed because of such an exception.

## 2.6. Non-Collusion

The Applicant's required signature on the Transmittal Cover Letter for an Application submitted in response to this RFA guarantees that the prices, terms and conditions, and services have been established without collusion with other Applicants and without effort to preclude Department from obtaining the best possible Application.

## 2.7. Applicant Withdrawal

Prior to the Closing Date for receipt of Applications, an Application may be withdrawn by submitting a written request for its withdrawal to Contract Specialist identified in Paragraph 3.3.2.

## 2.8. Public Disclosure





- 2.8.1. Pursuant to RSA 21-G:37, the content of responses to this RFA must remain confidential until the Governor and Executive Council have awarded a contract. At the time of receipt of Applications, the Department will publish the number of responses received with no further information. No later than five (5) business days prior to submission of a contract to the Department of Administrative Services pursuant to this RFA, the Department will post the name, rank or score of each Applicant. Applicant's disclosure or distribution of the contents of its Application, other than to the State, will be grounds for disqualification at the State's sole discretion.
- 2.8.2. The content of each Application and addenda thereto will become public information once the Governor and Executive Council have approved a contract. Any information submitted as part of an Application in response to this RFA may be subject to public disclosure under RSA 91-A. In addition, in accordance with RSA 9-F:1, any contract entered into as a result of this RFA will be made accessible to the public online via the website Transparent NH ([www.nh.gov/transparentnh/](http://www.nh.gov/transparentnh/)). Accordingly, business financial information and proprietary information such as trade secrets, business and financials models and forecasts, and proprietary formulas may be exempt from public disclosure under RSA 91-A:5, IV.
- 2.8.3. Insofar as an Applicant seeks to maintain the confidentiality of its confidential commercial, financial or personnel information, the Applicant must clearly identify in writing the information it claims to be confidential and explain the reasons such information should be considered confidential. This must be done by separate letter identifying by page number and Application section the specific information the Applicant claims to be exempt from public disclosure pursuant to RSA 91-A:5. **The Applicant is strongly encouraged to provide a redacted copy of their application.**
- 2.8.4. Each Applicant acknowledges that the Department is subject to the Right-to-Know Law New Hampshire RSA Chapter 91-A. The Department shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable laws or regulations, including but not limited to New Hampshire RSA Chapter 91-A. In the event the Department receives a request for the information identified by an Applicant as confidential, the Department shall notify the Applicant and specify the date the Department intends to release the requested information. Any effort to prohibit or enjoin the release of the information shall be the Applicant's responsibility and at the Applicant's sole expense. If the Applicant fails to obtain a court order enjoining the disclosure, the Department may release the information on the date the Department specified in its notice to the Applicant without incurring any liability to the Applicant.

## 2.9. Non-Commitment

Notwithstanding any other provision of this RFA, this RFA does not commit the Department to award a Contract. The Department reserves the right to reject any and



all Applications or any portions thereof, at any time and to cancel this RFA and to solicit new Applications under a new Application process.

## **2.10. Request for Additional Information or Materials**

The Department may ask any Applicant to provide additional information or materials needed to clarify information presented in the Application. Such a request will be issued in writing and will not provide an Applicant with an opportunity to change, extend, or otherwise amend its Application in intent or substance.

## **2.11. Liability**

By submitting an Application in response to this RFA, an Applicant agrees that in no event shall the State be either responsible for or held liable for any costs incurred by an Applicant in the preparation or submittal of or otherwise in connection with an Application, or for work performed prior to the Effective Date of a resulting contract.

## **2.12. Oral Presentations and Discussions**

The Department reserves the right to require some or all Applicants to make oral presentations of their Application. The purpose of the oral presentation is to clarify and expound upon information provided in the written application. Applicants are prohibited from altering the original substance of their Applications during the oral presentations. The Department will use the information gained from oral presentations to refine the technical review scores. Any and all costs associated with an oral presentation shall be borne entirely by the Applicant.

## **2.13. Successful Applicant Notice and Contract Negotiations**

- 2.13.1. If an Applicant(s) is selected, the Department will notify the successful Applicant(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the Department successfully completes negotiations with the selected Applicant(s), all submitted Applications remain eligible for selection by the Department. In the event contract negotiations are unsuccessful with the selected Applicant(s), the evaluation team may recommend another Applicant(s). The Department will not contact Applicant(s) that are not initially selected to enter into contract negotiations.

## **2.14. Scope of Award and Contract Award Notice**

- 2.14.1. The Department reserves the right to award a service, part of a service, group of services, or total services and to reject any and all Applications in whole or in part. A contract award is contingent on approval by the Governor and Executive Council.
- 2.14.2. If a contract is awarded, the Applicant must obtain written consent from the Department before any public announcement or news release is issued pertaining to any contract award.

## **2.15. Protest of Intended Award**



Any challenge of an award made or otherwise related to this RFA shall be governed by RSA 21-G:37, and the procedures and terms of this RFA. The procedure set forth in RSA 21-G:37, IV, shall be the sole remedy available to challenge any award resulting from this RFA. In the event that any legal action is brought challenging this RFA and selection process, outside of the review process identified in RSA 21-G:37, IV, and in the event that the State of New Hampshire prevails, the challenger agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

## **2.16. Contingency**

Aspects of the award may be contingent upon changes to state or federal laws and regulations.

## **2.17. Ethical Requirements**

From the time this RFA is published until a contract is awarded, no Applicant shall offer or give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B, to any elected official, public official, public employee, constitutional official, or family member of any such official or employee who will or has selected, evaluated, or awarded an RFP, or similar submission. Any Applicant that violates RSA 21-G:38 shall be subject to prosecution for an offense under RSA 640:2. Any Applicant who has been convicted of an offense based on conduct in violation of this section, which has not been annulled, or who is subject to a pending criminal charge for such an offense, shall be disqualified from submitting an Application to this RFA, or similar request for submission and every such Applicant shall be disqualified from submitting any Applicant or similar request for submission issued by any state agency. An Applicant that was disqualified under this section because of a pending criminal charge which is subsequently dismissed, results in an acquittal, or is annulled, may notify the Department of Administrative Services, which shall note that information on the list maintained on the state's internal intranet system, except in the case of annulment, the information, shall be deleted from the list.

## **3. Application Process**

### **3.1. Overview**

- 3.1.1. Application documents must be presented in the order indicated below.
- 3.1.2. Applications must conform to all instructions, requirements and contents indicated below.
- 3.1.3. The Department must receive the Application by the time and date specified in the Procurement Timetable in Section 3 and in the manner specified or it will be rejected as non-compliant, unless waived by the Department as a non-material deviation.
- 3.1.4. The Department will conduct an initial screening step to verify Applicant compliance with the submission requirements of this RFA. The Department may waive or offer a limited opportunity for an Applicant to



cure immaterial deviations from the RFA requirements if it is determined to be in the best interest of the Department.

- 3.1.5. Late submissions that are not accepted will remain unopened and will be discarded. Submission of the Application shall be at the Applicant's expense.

### 3.2. Application Content

- 3.2.1. A **Transmittal Cover Letter** on the Applicant's letterhead that must:

- 3.2.1.1. Reference, "**RFA-2021-DBH-06-MENTA;**"
- 3.2.1.2. Identify the name, title, mailing address, telephone number and email address of the person authorized by the Applicant to contractually obligate the agency or individual;
- 3.2.1.3. Acknowledge that the Applicant has read this Request for Application, understands it, and agrees to be bound by its requirements;
- 3.2.1.4. Contain the date that the Application was submitted; and
- 3.2.1.5. Be signed by an individual who is authorized to bind the Applicant to all statements, including services and prices contained in this Request for Application.

- 3.2.2. **Mandatory Responses** to RFA Questions in Subsection 1.5.

- 3.2.3. **Curriculum Vitae or Resume** of each individual performing functions identified in this RFA.

- 3.2.4. **Licenses, Credentials, Certificates and Permits** as required by this Request for Application.

- 3.2.5. **Current Certificate of Insurance**

- 3.2.6. **Three (3) references for the Applicant.** The Applicant must submit three (3) written references from individuals or organizations who have knowledge of the Applicant's capability to deliver services applicable to this solicitation. A current Department employee will not be considered a valid reference:

- 3.2.6.1. Each written reference must include current contact information, a description of work performed, quality of work, and dates of performance.
- 3.2.6.2. The Department may contact a reference to clarify any information.

- 3.2.7. **New Hampshire Certificate of Good Standing**

The Department requires, as applicable, every Contractor to acquire a Certificate of Good Standing or assurance of obtaining registration with



the New Hampshire Office of the Secretary of State in accordance with RSA 5:18-a.

3.2.8. **Affiliations – Conflict of Interest Statement** regarding any and all affiliations that might result in a conflict of interest. Explain the relationship and how the affiliation would not represent a conflict of interest.

3.2.9. **Appendix B – Contract Monitoring Provisions.**

### 3.3. Procurement Timetable and Contact Information

3.3.1. Schedule of Events

Item	Action (All times are according to Eastern Standard Time. The Department reserves the right to modify these dates at its sole discretion.)	Date
1.	RFA Release Date	January 28, 2021
2.	RFA Applicant Questions Submission Deadline	February 17, 2021 <b>11:59 PM</b>
3.	Department Responses to Questions Published	February 24, 2021
4.	Application Submission Deadline	March 17, 2021 <b>11:59 PM</b>

3.3.2. All questions and applications must be submitted electronically to:

State of New Hampshire  
Department of Health and Human Services  
Nikki Gauthier, Contract Specialist  
Bureau of Contracts & Procurements  
129 Pleasant Street  
Concord NH 03301  
Email: [Nikki.Gauthier@dhhs.nh.gov](mailto:Nikki.Gauthier@dhhs.nh.gov)  
Phone: (603) 271-9493

3.3.3. From the date of release of this RFA until an award is made and announced regarding the selection of an Applicant, all communication with personnel employed by or under contract with the Department regarding this RFA is prohibited unless first approved by the RFA Point of Contact listed in Paragraph 3.3.2, herein. Department employees have been directed not to hold conferences and/or discussions concerning this RFA with any potential contractor during the selection process, unless otherwise authorized by the RFA Point of Contact.



Applicants may be disqualified for violating this restriction on communications.

### **3.4. Applicant's Questions and Answers**

- 3.4.1. All questions about this RFA, including but not limited to requests for clarification, additional information or any changes to the RFA must be made in writing, citing the RFA page number and part or subpart, and submitted by email to the Contract Specialist identified in Paragraph 3.3.2.
- 3.4.2. The Department may consolidate or paraphrase questions for efficiency and clarity. Questions that are not understood will not be answered. Statements that are not questions will not receive a response.
- 3.4.3. Questions must be submitted by email; however, the Department assumes no liability for ensuring accurate and complete email transmissions.
- 3.4.4. Questions must be received by the deadline provided in Paragraph 3.3.1, Procurement Timetable.
- 3.4.5. Written answers to questions received will be published on the Department's website on or about the date indicated in Paragraph 3.3.1, Procurement Timetable.

### **3.5. Validity of Application**

Applications must be valid for one hundred eighty (180) days following the deadline for submission in the Procurement Timetable above, or until the Effective Date of any resulting Contract, whichever is later.

## **4. Appendices**

- 4.1. Appendix A – New Hampshire Department of Health and Human Services Agreement for Attorney Services, State Fiscal Years 2022 and 2023**
- 4.2. Appendix B – Contract Monitoring Provisions**



New Hampshire Department of Health and Human Services  
Mental Health Administrative Hearings Legal Representative  
Appendix A



**NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AGREEMENT FOR ATTORNEY SERVICES, STATE FISCAL YEARS 2022 AND 2023**

This Agreement is made and entered into by and between the State of New Hampshire (hereinafter "State"), acting through the Department of Health and Human Services (hereinafter "Department"), and attorneys qualified to provide representation, (hereinafter "Contractor").

**Authority**

NH RSA 135-C: 52, and administrative rules He-M 609, 306, and 611, provide individuals subject to a revocation of conditional discharge, emergency medication administration, or emergency transfer to the Secure Psychiatric Unit with the unconditional constitutional right to legal counsel at administrative hearings.

**Notices and Law Firm's Designated Contact**

All notices required to be given by this Agreement shall be delivered to the following addresses:

To the State: Department of Health and Human Services  
Office of Client and Legal Services  
105 Pleasant Street  
Concord, New Hampshire 03301

To the Contractor: XXXXXXXX  
XXXXXXXX  
XXXXXXXX

One attorney in each firm shall be responsible for overseeing cases assigned to the firm and for certifying all reports. The designated attorney for this agreement is XXXXXXXX.

**Performance by Contractor**

Term: Contractor agrees to provide representation in appointed cases during the period beginning **July 1, 2021** and ending **June 30, 2023**. Contractor further agrees to complete to final disposition all cases undertaken pursuant to this Agreement.

Number of Cases: There shall be no guaranteed maximum or minimum number of cases assigned.

Representation: Such representation shall originate by assignment of DHHS for hearings before the Administrative Appeals Unit pursuant to He-M 609, 306, and 611.

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**Price Limitations and Payment Schedule**

The State agrees to pay Contractor at the rate of \$60 per hour with a maximum of \$300 per case. Said maximum may be waived upon submission of documentation of extenuating circumstances to the Department of Health and Human Services, Office of Client and Legal Services.

The Contractor shall submit individual itemized invoices for each case under this agreement in a form approved by the Department, to include at a minimum, the name of the individual represented, type of case, dates of service and amount of time on each date. Said invoice shall be mailed to DHHS, Bureau of Mental Health Services, Attn: Finance, 105 Pleasant Street, Concord, NH 03301.

**Compensation and Unit Administration**

1. Compensation pursuant to this Agreement is for attorney services only.
2. When the Contractor is appointed pursuant to this Agreement to represent an individual in a specific administrative case, the Contractor shall not receive any fee or expense for representation of that individual in that case except as provided for under this Agreement.
3. In the event the Contractor withdraws from representation in a case prior to Final Disposition, under circumstances where continued representation would violate the New Hampshire Rules of Professional Conduct, the Contractor shall be entitled to receive credit for representation in that case at the rate of one-half of the unit value that (s)he would otherwise have been entitled to receive. In instances where the discovery of such circumstances occurs late in the preparation of the case, and such discovery was unavoidably delayed, the Contractor may request, in writing, that the Department waive this provision. A statement of the circumstances requiring withdrawal and the reasons why the delay in discovering those circumstances was unavoidable, shall be submitted in writing with any request for a waiver.

**Law Practice Requirements**

1. If the Contractor is a law firm, attorneys associated with the firm may provide representation pursuant to this Agreement only after obtaining approval to do so from the Department. Unless an attorney associated with the firm obtains approval from the Department after the execution of this Agreement, only those attorneys, who sign this Agreement, are approved by the Department to provide representation under this Agreement.
2. No part of the Contractor's performance under this Agreement may be assigned or subcontracted.
3. The Contractor shall make provision for prompt and effective communication with clients in cases undertaken pursuant to this Agreement.
4. Assignment to a case includes the obligation to prepare and submit a formal motion for reconsideration when the client indicates his or her intention to seek reconsideration of a final decision. Credit will be awarded separately for the preparation of the motion for reconsideration without the need for a new assignment.
5. The Contractor's representation of individuals under this Agreement shall at all times comply with the Rules of Professional Conduct or any similar code of ethics to which attorneys may be subject.



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**Closing Cases and Representation following Disposition**

No payment will be made for further representation after filing of a motion for reconsideration, absent a new assignment by the Department. This termination of representation does not relieve any other ethical obligations under the Rules of Professional Conduct.

**Conflict Avoidance, Record Keeping and Reporting**

1. Upon assignment of a new client, the Contractor will make reasonable and diligent efforts to obtain and review relevant court documents, investigative reports, and other discovery materials to determine if any potential conflicts of interest exist in the case. Record-keeping systems will be maintained which facilitate the early and efficient identification of conflicts.
2. At a minimum, substantive portions of the files of clients represented pursuant to this Agreement shall be retained for at least six years from the date of the last action taken on the case, or on any matter related to the case, or beyond any applicable period of statutory limitations on actions, whichever is longer. If the Contractor intends to destroy or transfer custody of the files of clients represented pursuant to this Agreement, (other than to the clients themselves, in which case a copy of the materials provided must be made), the Contractor shall notify the Department, in writing, at least 60 days prior to taking the action. These Agreement terms do not limit the Contractor's other legal and ethical obligations to preserve client property and retain client files.

**Administrative Requirements**

1. The Contractor agrees to carry professional liability insurance covering all services to be performed pursuant to this Agreement in an amount of not less than \$100,000 per claim and \$300,000 aggregate, and to provide a certificate of such insurance to the Department with execution of this agreement and to notify the Department immediately if such insurance is cancelled or expires during the Term of the Agreement for any reason. Certificates of insurance shall require the insurer to give the Department at least thirty days notice prior to cancellation, expiration or any other material change in the policy, and of any claim made pursuant to the policy. Termination of professional liability insurance during the Term of the Agreement shall be cause for immediate termination of this Agreement. In the event of termination of this Agreement under this Paragraph, the Contractor shall reimburse the State for all fees paid and forfeit rights to payment for such matters.
2. If at any time the Contractor ceases to be a member in good standing of the New Hampshire Bar Association, this Agreement terminates automatically. The Contractor shall notify the Department in writing immediately of any change in standing as a member of the New Hampshire Bar Association or any other Bar Association.
3. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.
4. The Contractor shall notify the Department in writing at least sixty days prior to the expiration of the Term of the Agreement of his/her intention to seek renewal of the Agreement. Nothing contained herein, however, shall be construed as entitling the Contractor to such renewal.
5. This Agreement constitutes the entire understanding between the parties with respect to the subject matter. No amendments to this Agreement shall be effective unless in writing and signed by duly authorized representatives of both parties.
6. It is understood and agreed to by the parties that in the performance of this Agreement, the Contractor is in all respects an independent Contractor and is neither an agent nor an employee of the State or the Department, and that the Contractor and its employees and agents are not entitled to any benefits, worker's

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Appendix A**

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compensation, or emoluments by the State, beyond those called for herein.

**New Hampshire Department of Health and Human Services  
Mental Health Administrative Hearings Legal Representative  
Appendix A**

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IN WITNESS WHEREOF, we have subscribed our hands, as representatives of the parties hereto.

**Contractor:**

_____ Contractor's printed name	_____ Contractor's signature	_____ Date
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_____ If a firm, title or capacity of signatory	_____ Law Firm Name
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_____ Witness's printed name	_____ Witness's signature	_____ Date
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**Approved Attorneys for Contractor:**

_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date
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_____ Approved attorney's printed name	_____ Approved attorney's signature	_____ Date
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**Department of Health and Human Services:**

_____ Katja S. Fox, Director Division for Behavioral Health	_____ Date	_____ Witness	_____ Date
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**N.H. Department of Administration, Division of Personnel**

_____ Division of Personnel, Director	_____ Date
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Approved as to form and execution:

BY: _____ Assistant Attorney General	_____ Date
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**New Hampshire Department of Health and Human Services  
Mental Health Administrative Hearings Legal Representative  
Appendix A**

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# Appendix B Contract Monitoring Provisions

***All vendors must complete and return pages 4 & 5, Management Questionnaire, and the required financial information as specified in Section 2.4, unless exempt.***

## **1. Definitions**

- 1.1. Department – NH Department of Health and Human Services (DHHS).
- 1.2. Vendors – non-state agency external entities with which the Department intends to enter into a legal agreement. Component units of the State shall be considered vendors (e.g., University of New Hampshire, Community College System of New Hampshire).
- 1.3. Subrecipients – vendors issued funds to provide goods or services on behalf of the Department to the public. In accordance with [2 CFR 200.331](#), characteristics which support the classification of a subrecipient include when the non-Federal entity:
  - 1.3.1. Determines who is eligible to receive what Federal assistance;
  - 1.3.2. Has its performance measured in relation to whether objectives of a Federal program were met;
  - 1.3.3. Has responsibility for programmatic decision making;
  - 1.3.4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
  - 1.3.5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Department.
- 1.4. Contractors – vendors issued funds to provide goods or services to the Department. In accordance with [2 CFR 200.331](#), characteristics indicative of a contractor are when the vendor:
  - 1.4.1. Provides the goods and services within normal business operations;
  - 1.4.2. Provides similar goods or services to many different purchasers;
  - 1.4.3. Normally operates in a competitive environment;
  - 1.4.4. Provides goods or services that are ancillary to the operation of the Federal program; and
  - 1.4.5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

## **2. Vendor Identification and Risk Assessment**

- 2.1. The Department shall identify **ALL** vendors receiving federal, general, or other funds as either a Subrecipient or a Contractor, as defined in Section 1, above and in 2 CFR 200.331.
- 2.2. The Department shall complete a risk assessment of Subrecipients to evaluate their risk of non-compliance with Federal and State statutes and regulations, as well as the terms and conditions of the contract.
- 2.3. The Department shall assess vendor programmatic risk utilizing the Management Questionnaire which addresses multiple factors that include, but are not limited to:
  - 2.3.1. Grant management experience.
  - 2.3.2. Documented history of non-performance or non-compliance.
  - 2.3.3. Audit findings.
  - 2.3.4. Recent personnel or system changes.

## Appendix B Contract Monitoring Provisions

- 2.3.5. Adequacy of internal controls.
- 2.4. The Department shall also assess vendor risk of financial solvency using the following Statement of Vendor's Financial Condition:
  - 2.4.1. The vendor's ability to demonstrate adequate financial resources for performance of the contract or the ability to obtain such resources as required during performance under this contract will be considered by the Department as part of the risk assessment to determine if enhanced contract monitoring is required if a contract is awarded.
  - 2.4.2. Each vendor must submit audited financial statements for the four (4) most recently completed fiscal years. If your organization has not been established long enough to have four (4) audited financial statements, please send the total number of statements generated since the inception of your organization. Statements must include a report by an independent auditor that expresses an unqualified or qualified opinion as to whether the accompanying financial statements are presented fairly in accordance with generally accepted accounting principles.
  - 2.4.3. Complete financial statements must include the following:
    - 2.4.3.1. Opinion of Certified Public Accountant;
    - 2.4.3.2. Balance Sheet;
    - 2.4.3.3. Income Statement;
    - 2.4.3.4. Statement of Cash Flow;
    - 2.4.3.5. Statement of Stockholder's Equity of Fund Balance;
    - 2.4.3.6. Complete Financial Notes; and
    - 2.4.3.7. Consolidating and Supplemental Financial Schedules.
  - 2.4.4. A vendor, which is part of a consolidated financial statement, may file the audited consolidated financial statements if it includes the consolidating schedules as supplemental information. A vendor, which is part of a consolidated financial statement, but whose certified consolidated financial statements do not contain the consolidating schedules as supplemental information, shall, in addition to the audited consolidated financial statements, file unaudited financial statements for the vendor alone accompanied by a certificate of authenticity signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification which attests that the financial statements are correct in all material respects.
  - 2.4.5. If a vendor is not otherwise required by either state or federal statute to obtain a certification of audit of its financial statements, and thereby elects not to obtain such certification of audit, the vendor shall submit the following as part of its proposal:
    - 2.4.5.1. Uncertified financial statements; and
    - 2.4.5.2. A certificate of authenticity which attests that the financial statements are correct in all material respects and is signed by an officer of the corporation, partner, or owner under penalty of unsworn falsification.
  - 2.4.6. Exemptions: The Department will not request audited financial statements from or perform Financial Risk Analyses for the following organizations:

## Appendix B Contract Monitoring Provisions

2.4.6.1. The University and Community College Systems of NH. These organizations are component units of the State which is ultimately financially liable for them.

2.4.6.2. Political Subdivisions, which includes counties and municipalities.

### **3. Contract Monitoring**

- 3.1. The Department shall determine if enhanced monitoring is necessary to address any risks identified through the risk assessment referenced in Section 2, above.
- 3.2. The Department shall incorporate contract monitoring procedures and activities into final contracts to address identified risks, which may include but are not limited to:
  - 3.2.1. Requesting vendors to provide fiscal reports and documentation behind reports to the Department for review.
  - 3.2.2. Reviewing vendor reporting processes and systems for data integrity.
  - 3.2.3. Performing file reviews to ensure vendor compliance with state and federal laws and rules in the administration of the contract.
  - 3.2.4. Conducting site visits to assess vendor compliance with applicable contract objectives and requirements.
  - 3.2.5. Reviewing vendor expenditure details to ensure all expenditures are allowable and in compliance with Federal and State laws and other applicable policies or rules.
  - 3.2.6. Providing targeted training or technical assistance to vendors.
  - 3.2.7. Reviewing monthly financial data to assess vendor financial solvency.
- 3.3. The Department shall conduct contract monitoring activities as specified in resulting contracts.

### **4. Vendor Disqualification**

- 4.1. The Department reserves the right to disqualify vendors who refuse to complete and return the Management Questionnaire on Page 4 and 5 of Appendix B, Contract Monitoring or the financial information as specified in Section 2.4.
- 4.2. In the event that the Department disqualifies a vendor from selection, the vendor shall have no right to appeal the Department's decision. Any review shall be in accordance with NH. RSA 21-G:37, IV.

# Appendix B Contract Monitoring Provisions

**Management Questionnaire for \_\_\_\_\_ (Vendor Name)**

***All vendors must complete and return this Management Questionnaire along with the required financial information in Section 2.4, unless exempt.***

	Question	YES	NO	N/A
1.	Was your organization established more than two years ago?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
2.	During the past 18 months, have you experienced staff turnover in positions that will be involved in the administration of the contract?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
3.	Have you managed the same or a similar contract or program during one of the last five (5) calendar years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
4.	Have you received federal funds from the Department through a contract during one of the last five (5) calendar years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
5.	Were you ever provided formal written notification from the Department that you were in non-compliance or failed to perform in accordance with contract provisions or requirements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
6.	If you had a Single Audit performed in accordance with the Federal Uniform Guidance (2 CFR 200 subpart F (200.500)) by an external entity or an audit performed by a state or federal agency during the most recently completed fiscal year, did the audit include any findings?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
7.	Have you ever been required to return payments to the Department as a result of an audit, unallowable expenditure or any other reason?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
8.	Has your organization implemented a new accounting, financial, or programmatic IT system within the last two years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
9.	Are you aware of any ongoing or pending lawsuits filed against your organization or any investigations or inspections of your organization by any state or federal regulatory agency within the last two years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
10.	With Department approval, if you intend to subcontract a portion of the work under the resulting contract to another entity, do you have competitive bid procedures for purchases and personal services contracts compliant with state and federal regulations, laws, and rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
11.	With Department approval, if you intend to subcontract a portion of the work under the resulting contract to another entity, do you have written policies and procedures for subrecipient/contractor determinations, risk assessments, and subrecipient monitoring as required under Federal Uniform Guidance (2 CFR subpart D (200.300))?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A



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	Question	YES	NO	N/A
12.	Does your accounting system identify the receipt and expenditure of program funds separately by each contract or grant, and by line item categories?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
13.	Does your organization maintain a formal system of segregation of duties for procurement, time keeping, and bank statement reconciliation activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
14.	Do you have procedures to ensure expenditures are reviewed by an independent person* to determine that all expenditures are allowable under the terms of the contract as well as federal and state regulations, laws and rules?*	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
15.	Are time distribution records maintained for each employee performing contracted services that account for time spent working on the contract versus time spent on all other activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
16.	Does your financial system compare amounts spent to date with budgeted amounts for each award?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
17.	Does your accounting or financial system include budgetary controls to prevent incurring obligations in excess of total funds available for a grant or a cost category (e.g., personnel costs, equipment, travel)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
18.	Do you maintain written policy and procedures for all aspects of financial transactions and accounting related to time keeping, a record retention, procurement, and asset management that are compliant with Federal Uniform Guidance requirements (2 CFR subpart D (200.300))?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

\*An independent person can be any individual within an organization or an outside third party, who verifies that an expenditure made by another person, is appropriate and in accordance with the terms of the contract. For example, one person would be responsible for making a purchase or authorizing payment and a second independent person verifies that funds were spent appropriately. If you do not have an independent person, please mark "No" for Question 14.

Marking No or N/A for any question on the Management Questionnaire does not preclude a Vendor from being selected.

**I hereby declare that the answers provided in this Management Questionnaire are accurate and true to the best of my knowledge.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Job Title

\_\_\_\_\_  
Date